



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney – 603-610-7240 (Direct Dial)

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

October 28, 2013

VIA FED EX

Michael Wagner
USEPA Region 1 – New England
5 Post Office Square
Mail Code: OES04-3
Boston, MA 02109-3912

**RE: Request for Extension of Consent Decree Deadlines
Peirce Island WWTF Upgrade
Docket #: 09-CV-283-PB
City of Portsmouth**

Dear Mike:

After our meeting on September 6, 2013 regarding dispute resolution of the City's request for modification of the Consent Decree schedule, the City and EPA agreed to exchange materials on October 7, 2013. Because of the government shutdown, we deferred the exchange of materials.

The City's position is that the decision to change in the scope of the WWTF upgrade from a 4.1 million gallon per day (MGD) secondary treatment facility to a 6.1 MGD facility capable of nitrogen treatment is consistent with the goals of the Consent Decree and the public interest and justifies the need for an extension of the original Consent Decree schedule for design and construction. This should not be viewed as an effort to delay an upgrade at the Peirce Island WWTF. The City's willingness to incur a \$20 million increase in the cost of the project demonstrates its commitment to the goals of the Clean Water Act I. The upgrade project has been approved for funding and the City is already preparing for construction by evaluating the project impacts to public health, welfare and safety. The extension of schedule is necessary to allow for implementing this project, both design and construction, in a manner consistent with sound construction and engineering principles.

Page Two

October 28, 2013

**RE: Request for Extension of Consent Decree Deadlines
Peirce Island WWTF Upgrade
Docket #: 09-CV-283-PB
City of Portsmouth**

It would be inconsistent with EPA's responsibility under the Clean Water Act for EPA to attempt to force the City to take on the unreasonable risks of designing and constructing the proposed \$45 million total nitrogen removal WWTF upgrade in the original 24 month construction schedule, which was based on a \$25 million secondary WWTF upgrade. The City was once required to build on an accelerated time frame a high rate sand filter system at the Pierce Island facility only to have that system fail and the public funds wasted.

The City has still proposed an aggressive schedule which is demonstrated through the information provided in this letter. Even with extension of time, there will be significant and numerous negative impacts to the City. The City's consultant, AECOM, has provided information detailing specifics that support the request as discussed at our meeting. These documents were prepared by AECOM with the assistance of Carlin Contracting, a well-known and respected contractor with broad experience in the construction of wastewater facilities and other complex infrastructure projects. The attached information is briefly summarized in the following paragraphs:

- 1) Memorandum titled Construction Extension Justification: A memorandum from AECOM comparing the estimated monthly construction manpower and heavy trucking activity under different construction project scenarios including:
 - Schedule 1 Secondary 4.3 MGD 24 Months: Original Consent Decree schedule constructing a 4.3 million gallons per day (MGD) secondary treatment facility for \$25.0 million in 24 months;
 - Schedule 2 TN8 6.1 MGD 33 Months: Proposed schedule constructing a 6.13 MGD secondary/nitrogen treatment plant for \$45.0 million in 33 months (includes a 6 month extension of the design phase);
 - Schedule 3 TN8 6.1 MGD 24 Months: Theoretical project constructing a 6.13 MGD secondary/nitrogen plant for \$45.0 million in 24 months

Significance:

This construction project will have a significant impact on the community. The impact on the community is demonstrated in this memorandum by the number of large construction vehicles (concrete trucks, dump trucks, 18-wheelers, etc.) that will travel to the construction site at the south end of

Page Three

October 28, 2013

**RE: Request for Extension of Consent Decree Deadlines
Peirce Island WWTF Upgrade
Docket #: 09-CV-283-PB
City of Portsmouth**

Peirce Island. By granting an extension of the original Consent Decree schedule, the impact will not be completely mitigated, but the intensity of the impact will be lessened. In order to get to the construction site, construction vehicles must pass the recreation and other facilities on the island including the state fishing pier, public boat launch, Four Tree Island, play ground, public pool, dog park, East End Trail System and the City's winter snow staging area. In order to get to Peirce Island the construction vehicles will have to pass through the tight historic streets of Portsmouth's downtown core (via Marcy Street, Court Street and others). Traffic control will be required at the intersections of these streets to allow the large construction vehicles to turn at intersections using both sides of the roadway. This may result in traffic queuing and efforts to avoid or minimize this impact will need to be developed and implemented. These areas are frequented by tourists who visit the cultural programs at Prescott Park and historic Strawberry Banke for their various functions. The memorandum indicates that even with an extension of the Consent Decree schedule, there will be a large (approaching 60,000 lbs) construction vehicle entering or leaving the construction site every 5 to 16 minutes during peak construction periods. Under a theoretical 24 months construction period, two construction shifts would be required forcing the use of large construction vehicles during the second shift (every 12 to 30 minutes from 3:30 PM to midnight). Second shift construction traffic would occur during the most congested period of the day with citizens, tourists and others visiting the recreational areas at and around the island. This is an unacceptable risk to the safety and welfare of the City's citizens and those visiting the City.

An unavoidable complexity is that the existing WWTF must operate and meet its interim NPDES permit limits during the progress of the construction. This will require that the WWTF maintain its current staffing levels, continue to receive their regularly scheduled deliveries for chemicals, equipment and other needs while construction is ongoing. The impact to existing operations is demonstrated in this memorandum by the amount of manpower that will be needed just for construction. Even with an extension of the Consent Decree schedule, there will be up to 76 additional people at the WWTF site during peak construction periods. Given the physical constraints of the WWTF site (a mere 3.75 acres) there will be significant disruption to normal operation that will require hour to hour coordination between WWTF staff and construction staff.

**RE: Request for Extension of Consent Decree Deadlines
Peirce Island WWTF Upgrade
Docket #: 09-CV-283-PB
City of Portsmouth**

- 2) Memorandum titled Design Extension Justification: A memorandum from AECOM explaining the justification for an extension of the design period set out in the Consent Decree by 6 months due to the complexities of combining the secondary and nitrogen treatment projects as proposed by the City.

Significance:

The City has decided, due to the now apparent economic and environmental advantages, to construct a treatment facility capable of removing nitrogen in advance of any legal permit limits being set. The City Council approved WWTF design was developed as a result of recent discussions with EPA clarifying the new plant capacity (6.1 MGD), and with the recognition that building nitrogen removal capacity now would achieve significant cost savings and enable earlier compliance with nitrogen limits likely to be imposed by the EPA in the future. The complexity of the project has therefore increased. However, acceleration of the design and construction of this facility to comply with a Consent Decree schedule intended for a much smaller project would compromise the integrity of the iterative design process and significantly increase the potential for design errors and omission and construction misses. In addition, the important value engineering phases of project review would likely be eliminated, a management tool recommended by EPA and sound project management practices. An accelerated schedule is thus unwise and unnecessary where continued operation of the current facility for an additional 18 months will have no measurable adverse effect on the Great Bay Estuary.

- 3) Memorandum titled Electrical Feed Justification: A Memorandum from AECOM explaining the necessary front- end time frame for upgrading and relocating the electrical feed, distribution and standby power systems.

Significance:

As the concurrent paths of regulatory discussions and engineering (piloting, etc.) evaluations recently converged it became clear that it would be advisable to substantially redesign what was originally a 4.3 MGD secondary WWTF that was to be retrofit inside of the Filter Building. The proposed 6.1 MGD TN8 WWTF cannot be retrofit inside the Filter Building. Instead, the Filter Building has to be completely demolished to build the

Page Five

October 28, 2013

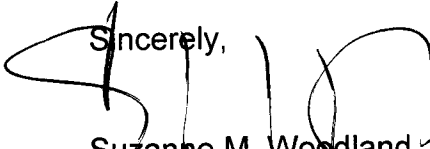
**RE: Request for Extension of Consent Decree Deadlines
Peirce Island WWTF Upgrade
Docket #: 09-CV-283-PB
City of Portsmouth**

new treatment system. Currently, the Filter Building houses the main electric feed and standby generator for the entire WWTF. Despite all reasonable efforts to accelerate the process, redesigning and building a new electrical feed and standby generator for the new larger WWTF will take a minimum of 14 months. Because of the inherent foundational importance of this element, this work has to be completed at the beginning of the project. The redesign and movement of this element and was not a necessary part of the original Consent Decree project and therefore this timeframe was not included in its schedule.

Also enclosed is a memorandum from the City's Deputy City Manager who was involved with the original construction effort at Peirce Island for the advanced primary facility as well as a memorandum from the City's Director of Public Works regarding his experience with extraordinary construction efforts and business impacts. These memoranda support the City's request for extending the design and construction schedule and demonstrate that the total Consent Decree extension of 18 months is justified due to the inherently sequential nature of the design and construction of key aspects of this project. Further, the information presented indicates that the proposed schedule consistent with the public interest both economically and environmentally. It is important to note that the extended schedule is still aggressive and will still have a significant impact on the community. There is no reasonable basis for imposing more dramatic adverse impacts on the City and its residents and businesses by mandating compliance with the existing, now unsuitable, Consent Decree schedule. It makes no sense to require the City to take significant risks to the success of the project and the health, safety and welfare of its citizens to comply with a deadline which was arbitrary to begin with and is no longer in the public interest. The extension of the compliance date will have no measurable adverse effect on the environment but will accomplish the EPA assumed benefits of nitrogen treatment at the earliest practicable date.

We look forward to discussing these materials with EPA and DOJ representatives. We suggest a conference call be scheduled promptly so that these materials can be explained and discussed.

Sincerely,


Suzanne M. Woodland
Assistant City Attorney
City of Portsmouth

Page Six

October 28, 2013

**RE: Request for Extension of Consent Decree Deadlines
Peirce Island WWTF Upgrade
Docket #: 09-CV-283-PB
City of Portsmouth**

enclosure

cc: E. Tupper Kinder, Esq.
David Allen, Deputy City Manager
Terry Desmarais, Jr., City Engineer
Tracy L. Wood, P.E., NHDES
K. Allen Brooks, Esq. (Dept. of Justice, Environmental Protection Bureau)
Mark Pollins, Director of Water Enforcement, US EPA
Joy Hilton (SEW), US EPA, Region 1
Chief of the Environmental Enforcement Section at Department of Justice
Peter M. Flynn, Esq., Enforcement Section, United States Department of Justice

City of Portsmouth

Department of Public Works



MEMORANDUM

DATE: October 25, 2013

TO: Suzanne Woodland
Assistant City Attorney

FROM: Peter Rice 
Director of Public Works

SUBJECT: Construction Related Impacts

This memo was prepared in response to your request for information regarding my experience with construction activities within the City of Portsmouth. As you know I have worked for the City for approximately 12 years during which I have been responsible for a number of construction projects including sewer separation projects as part of the City's on-going CSO-Long Term Control Plan.

I was the supervising engineer for the City's Islington Street Area Phase 1 Sewer Separation Project. Due to the heavy traffic flow at the critical intersection of Bartlett and Islington Street a portion of this project was constructed at night in order to limit traffic impacts and business disruption. It was my experience during that project that the night work was less efficient than work conducted during the normal daytime construction hours. Major efforts were made to ensure the safety of workers during these nighttime operations. Special lighting was required. Fortunately, the most immediately impacted properties were commercial businesses and therefore the backup alarms, jacking, construction vehicle noise was less disruptive to residential homes than in other locations in the City. However, the noise from this night construction resulted in a number of residential complaints.

Based on my professional experience, projects which require second or more shifts require such extraordinary changes to normal construction activities they should be avoided both for the safety of workers, the efficiency of the project and to avoid disruption to the community if at all possible.

In addition to night work experience, I was the supervising engineer for the City's State Street Sewer Separation project. This sewer separation project included a complete road and streetscape reconstruction. Local businesses were heavily impacted by this project even though at all times the street was open for traffic. Based on the regular communications I received from business owners and in particular restaurant owners the construction activities and the regular truck traffic negatively impacted business. In order to accommodate and lessen the impact of the project activities construction activities were closed down on Friday by midday, so that visitors to local residents would have easy access to the businesses.

Given the proximity to Prescott Park and other downtown venues, extended construction activities at Peirce Island beyond the normal work day would be disruptive to businesses and would result in additional hardship that would be deemed unacceptable by the business community.